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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/864,015	05/23/2001	Charles P. Tresser	CHA920010005US1	9978

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EXAMINER	
LEMIEUX, JESSICA	

ART UNIT	PAPER NUMBER
3693	

NOTIFICATION DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTOCommunications@hoffmanwarnick.com

Office Action Summary	Application No.	Applicant(s)	
	09/864,015	TRESSER ET AL.	
	Examiner	Art Unit	
	JESSICA L. LEMIEUX	3693	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 August 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-34* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-34* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date. _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This Final Office action is in response to the application filed on May 23rd, 2001 and in response to the applicant's arguments/amendments filed on August 20th, 2008. Claims 1-34 are pending.

Response to Arguments

2. Applicant argues that the prior art "fails to teach or suggest submitting timestamp orders to the market." Examiner notes that these arguments are made with respect to the amended claim language. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection. Examiner would like to point out that although applicant is asserting that the use of timestamps in Gutterman are used for order management for the broker, Applicant is wrong in arguing that they aren't used for order qualification. Gutterman specifically states "such time stamping is important for audit and integrity functions of the system, *as well as for carrying out order matching features of some types of trading system*" (column 7, lines 59-68). Therefore it would have been obvious to one skilled in the art at the time of invention that the prior art teaches using time stamping for order qualification.

3. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re*

Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Gutterman does in fact provide a tool for brokers engaging in a physical market however it would be obvious to one to one skilled in the art at the time of invention that Gutterman can easily be modified to use an electronic marketplace instead of a face-to-face market. Gutterman states the "physical" exchange only furnishes a place where market participants can meet to trade futures contracts (column 1, lines 19-31). Gutterman further states "transaction information is typically entered… and is accessible through computer terminals" (column 1, lines 44-53). Examiner notes that since the physical exchange only furnishes a place it would be easy to adapt the prior art to include a fully automated exchange.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-21, 23-28 and 30-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Publication US2002/0065766 to Brown et al (hereinafter Brown) in view of US Patent Number 5,297,031 to Gutterman et al (hereinafter Gutterman).

As per claims 1, 11, 15, 25 and 34

Brown teaches the system, medium, process and method of an electric marketplace via a network comprising:

a. broadcasting a price quote from a market maker over the network at a beginning of a current trading interval (paragraphs 0015+),

b. distributing the price quote over a plurality of network nodes within the network (paragraphs 0015+),

c. receiving an order submitted from a participant who is in communication with one of the network nodes (paragraphs 0015 and 0044-0067),

d. time stamping the order when the order passes through a trusted node, delivering the order to the market maker and examining the time stamp of the order to determine if the order qualifies for processing during the current trading interval (paragraphs 0044-0067),

e. where, comparing the timestamp with a first predetermined time set during the trading interval, comparing a time the order was received with a second predetermined time set during the current trading interval and qualifying the order if both the timestamp is less than the first predetermined time and the time the order was received is less than the second predetermined time (paragraphs 0044-0067).

Brown does not specifically teach each of the orders includes a time stamp from one of a plurality of agents residing within the network indicating a time that is subsequent to the order being placed by a participant and precedes the order being received by the market maker.

Gutterman teaches each of the orders includes a time stamp from one of a plurality of agents residing within the network indicating a time that is subsequent to the order being placed by a participant and precedes the order being received by the market maker (column 7, line 59- column 8, line 53).

Gutterman further teaches receiving a time stamp at the market maker (submitting timestamp orders to the market) (column 8, line 10- column 9, line 13).

Therefore it would have been obvious to one skilled in the art at the time of invention to modify the trading system of Brown to include that each of the orders includes a time stamp from one of a plurality of agents residing within the network indicating a time that is subsequent to the order being placed by a participant and precedes the order being received by the market maker and receiving a time stamp at the market maker as taught by Gutterman to assist with audits and maintain the integrity of orders as well as carrying out order matching features.

As per claims 2-4

Brown discloses a trading interval including a fixed amount of time, a trading interval including a variable amount of time defined by the trading system and the trading system defining a trading cut-off time during each trading interval (paragraphs 0015 & 0050-0067).

As per claims 5-8

Brown discloses a time analysis system qualifying orders by comparing the time stamp for each order with the trading cut-off time for the current trading interval, a trading system defining an effective endpoint for each trading interval based on a computational time of the market maker, a time analysis system further qualifying orders by comparing a time the order was received by the market maker with the effective endpoint of the current trading interval, and a trading system executing each order that

qualifies for processing at the call auction of the current trading interval unless an order price does not meet a price fixed by the trading system (paragraphs 0015, 0044-0056 and 0061-0067).

As per claim 9

Brown discloses a trading system that places each order that does not qualify for processing into a queue for consideration during a subsequent call auction (paragraph 0015).

As per claim 10

Brown discloses a system for broadcasting price quotes to each of the notes in the network (paragraph 0015).

As per claims 12 and 13

Brown discloses a means for examining timing information that compares a time the order was received with an effective endpoint set during the current interval to determine if the order qualifies for processing and a means for examining timing information that compares a time the order was received with an effective endpoint set during the current interval to determine if the order qualifies for processing (paragraphs 0015+).

5. Claims 14, 16-21 and 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Publication US2002/0065766 to Brown et al (hereinafter Brown) in view of US Patent Number 5,297,031 to Gutterman et al (hereinafter Gutterman) further in view of US Patent Publication US2002/0019795 to Madoff et al (hereinafter Madoff).

As per claims 14, 16-21 and 23-24

Brown teaches an electric marketplace via a network that qualifies orders.

Brown and Gutterman do not specifically teach an electronic exchange wherein the market participants submit orders to the network from user interfaces that communicate with the network notes, an electronic exchange wherein the user interfaces comprise web browsers, an electronic exchange wherein the user interfaces comprise cellular devices, an electronic exchange wherein the market information further includes quote information established at a previous call auction, an electronic exchange further comprising means for ensuring that all network nodes receive quote information within a predetermined window of time, an electronic exchange, wherein the quote information is distributed over the network using Pub/Sub technology.

Madoff teaches an electronic exchange wherein the market participants submit orders to the network from user interfaces that communicate with the network notes, an

electronic exchange wherein the user interfaces comprise web browsers, an electronic exchange wherein the user interfaces comprise cellular devices, an electronic exchange wherein the market information further includes quote information established at a previous call auction, an electronic exchange further comprising means for ensuring that all network nodes receive quote information within a predetermined window of time, an electronic exchange, wherein the quote information is distributed over the network using Pub/Sub technology (paragraphs 0017+).

Therefore it would have been obvious to one skilled in the art at the time of invention to modify the trading system of Brown and Gutterman to include an electronic exchange wherein the market participants submit orders to the network from user interfaces that communicate with the network notes, an electronic exchange wherein the user interfaces comprise web browsers, an electronic exchange wherein the user interfaces comprise cellular devices, an electronic exchange wherein the market information further includes quote information established at a previous call auction, an electronic exchange further comprising means for ensuring that all network nodes receive quote information within a predetermined window of time, an electronic exchange, wherein the quote information is distributed over the network using Pub/Sub technology as taught by Madoff because the additional information and ways to submit bids would be more user-friendly and make the trading system more efficient.

As per claims 26-28 and 30-33

Brown and Gutterman do not specifically teach the price quote being distributed using a Pub/sub technology, the order being submitted via a browser, the order being submitted via a cellular device, the examining sep comparing a time stamp to a predetermined time set during the current trading interval, a step of comparing a time the order was received by the market maker with a second predetermined time set during the current trading interval, a step of processing the order if it qualifies, wherein the processing step includes the steps of determining if an order meets a price set by the market maker at the end of the current trading interval and executing the order at the end of the current trading interval, a step of considering the order for processing during a subsequent interval if the order does not qualify.

Madoff teaches the price quote being distributed using a Pub/sub technology (paragraphs 0017-0019), the order being submitted via a browser (paragraphs 0017-0019), the order being submitted via a cellular device (paragraphs 0015 & 0017-0019), the examining sep comparing a time stamp to a predetermined time set during the current trading interval (paragraphs 0055-0057), a step of comparing a time the order was received by the market maker with a second predetermined time set during the current trading interval (paragraphs 0055-0057), a step of processing the order if it qualifies, wherein the processing step includes the steps of determining if an order meets a price set by the market maker at the end of the current trading interval and executing the order at the end of the current trading interval (paragraphs 0055-0057), a step of considering the order for processing during a subsequent interval if the order does not qualify (paragraphs 0026-0027).

Therefore it would have been obvious to one skilled in the art at the time of invention to modify the trading system of Brown and Gutterman to include the price quote being distributed using a Pub/sub technology, the order being submitted via a browser, the order being submitted via a cellular device, the examining sep comparing a time stamp to a predetermined time set during the current trading interval, a step of comparing a time the order was received by the market maker with a second predetermined time set during the current trading interval, a step of processing the order if it qualifies, wherein the processing step includes the steps of determining if an order meets a price set by the market maker at the end of the current trading interval and executing the order at the end of the current trading interval, a step of considering the order for processing during a subsequent interval if the order does not qualify as taught by Madoff because the additional information and ways to submit bids would be more user-friendly and make the trading system more efficient.

6. Claims 22 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Publication US2002/0065766 to Brown et al (hereinafter Brown) in view of US Patent Number 5,297,031 to Gutterman et al (hereinafter Gutterman) in view of US Patent Publication US2202/0019795 to Madoff et al (hereinafter Madoff) and further in view of US Patent Number 6,839,021 to Sheynblat et al (hereinafter Sheynblat).

As per claims 22 and 29

Brown, Gutterman and Madoff disclose an electronic exchange implemented over a network with network nodes, gateway agents and a market maker system as disclosed above.

Brown, Gutterman and Madoff do not specifically teach the gateway agents obtaining times for the time stamps from a global positioning system.

Sheynblat teaches obtaining times for time stamps from a global positioning system (column 3, lines 9-67- column 4, lines 1-2).

Therefore it would have been obvious to one skilled in the art at the time of invention to modify the electronic exchange implemented over a network with network nodes, gateway agents and a market maker system to include obtaining times for time stamps from a global positioning system because Sheynblat discloses using the times for time stamps from a global positioning system for use on a network, such as the Internet, or other types of computer networking systems (column 12, lines 21-38).

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JESSICA L. LEMIEUX whose telephone number is (571)270-3445. The examiner can normally be reached on Monday-Thursday 8AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on 571-272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James A. Kramer/
Supervisory Patent Examiner, Art Unit 3693

/J. L. L./
Examiner, Art Unit 3693
November 2008

Jessica L Lemieux
Examiner
Art Unit 3693